



OPASTCO

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June 7, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

***Ex Parte* Notice**

**Re: Petition for Clarification or, in the Alternative, Waiver of Section 76.1204(a),
(b) of the Commission's Rules; Implementation of Section 304 of the
Telecommunications Act of 1996; Commercial Availability of Navigation
Devices
CS Docket No. 97-80**

**Implementation of the Cable Television Consumer Protection and
Competition Act of 1992; Development of Competition and Diversity in
Video Programming Distribution: Section 628(c)(5) of the Communications
Act: Sunset of Exclusive Contract Prohibition
MB Docket No. 07-29**

**Annual Assessment of the Status of Competition in the Market for the
Delivery of Video Programming
MB Docket No. 06-189**

**Inquiry Concerning the Deployment of Advanced Telecommunications
Capability to All Americans in a Reasonable and Timely Fashion, and
Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the
Telecommunications Act of 1996
GN Docket No. 07-45**

Dear Ms. Dortch:

On June 6, 2007, Roger Nishi of Waitsfield Champlain Valley Telecom in Waitsfield, VT, and Stephen Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) met with Michelle Carey and Ian

Dillner, legal advisors to Chairman Kevin Martin. The meeting was held to discuss OPASTCO's view that measures that ease the entry of telecommunications carriers into the video market also serve to enhance broadband deployment and penetration. The discussion focused on three main issues: 1) the need to clarify Section 76.1204 of the Commission's rules regarding the separation of security and navigation functions in set-top boxes as they apply to Internet Protocol Television devices; 2) the need to extend the Commission's program access rules per Section 628 of the Communications Act; and 3) the need to reform the current retransmission consent regime. The attached presentation was used during the meeting and contains the details of our discussion.

In accordance with FCC rules, this letter and the presentation are being filed electronically in the above-captioned dockets.

Sincerely,

/s/ Stephen Pastorkovich

Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst
OPASTCO

cc: Michelle Carey
Ian Dillner



O P A S T C O

Organization for the Promotion and Advancement of Small Telecommunications Companies

The Video-Broadband Link: Three Steps to Enhance Broadband Penetration

**Presentation to Chairman Martin's Office
June 6, 2007**

About OPASTCO

- OPASTCO is a national trade association of over 520 small, rural local exchange carriers (LECs), including both commercial companies and co-operatives. OPASTCO members are “rural telephone companies” as defined in 47 U.S.C. §153(37).
- One half of OPASTCO members are also traditional cable companies; 75 percent offer video via cable, DSL, fiber, or some combination.
- Virtually all offer high speed data services, reaching more than 90 percent of customers on average. Forty percent offer it to 100 percent of customers. Half offer discounts when video and broadband services are bundled together. Penetration rates average 31 percent overall.
- Almost 90 percent offer speeds of 1 Mbps or greater.

Three Steps To Enhance Broadband

Broadband penetration is enhanced when it is bundled with video services. Therefore, the Commission can spur additional broadband deployment and penetration by taking the following short-term steps:

- 1. Grant The OPASTCO-NTCA Petition On Set-Top Boxes.**
- 2. Extend The Prohibition Against Exclusive Contracts For Programming As Provided For In Section 628.**
- 3. Grant The ACA Petition On Retransmission Consent.**

Access To Content Spurs Broadband Deployment

Increased broadband deployment is a common goal shared by policymakers and industry. Despite many obstacles, notably higher per-customer costs, most rural LECs have deployed broadband to a large portion of their customers.

Rural LECs and industry studies have found that bundling broadband data services with video increases broadband “take rates” (penetration). This makes further investments and deployment of broadband to remaining customers more economically practical.

The Commission should take action to expand access to content and encourage entry into the multichannel video programming distributor (MVPD) market, as this in turns spurs broadband penetration.

The Video-Broadband Link Has Been Established

A positive correlation has been established between video services and broadband deployment, as well as broadband penetration.

Deployment:

"The ability to deploy broadband networks rapidly and the ability to offer video to consumers are linked intrinsically." – Chairman Martin's remarks to the Phoenix Center (Dec. 6, 2006)

Penetration:

"Entertainment applications will be the key. If anything will pull in the [broadband] holdouts, it's going to be applications that make the Internet more akin to pay TV." – John Barrett, Director of Research, Parks Associates, Press Release (Mar. 22, 2007)

How The Commission Can Help: Step 1

Grant The OPASTCO-NTCA Petition On Set-Top Boxes.

Many rural carriers entered the IPTV market to provide consumer choice and expand broadband penetration. Section 76.1204 of the Commission's rules, which requires separation of the security and navigation functions of set-top boxes, was written before the emergence of viable IPTV solutions. The rules incorporate cable industry standards. However, similar standards have not yet been developed for IPTV technologies. This ambiguity has required cutting-edge companies to pay large filing fees for waivers that should not be necessary.

OPASTCO and the National Telecommunications Cooperative Association (NTCA) jointly filed a petition that requests clarification of what constitutes compliance for IPTV equipment, pending the development of standards. In the alternative, it requests waivers for providers of IPTV services pending clarification. In addition, older NextLevel products should be granted permanent waivers, as requested in a separate petition.

How The Commission Can Help: Step 2

Extend The Prohibition Against Exclusive Contracts For Programming As Provided For In Section 628 of the Cable Act.

Programmers retain the ability and incentive to discriminate against new entrants. Access to “must have” programming is key to the viability of small video providers. Therefore, the content access provision should be extended for at least five more years.

The current program access complaint process should be reformed to make it effective and work in a timely manner. Mandatory non-disclosure provisions make it difficult or impossible to demonstrate unfair practices, and predatory pricing impedes entry into the MVPD market. The complaint process should include discovery rules that enable complainants to demonstrate violations.

How The Commission Can Help: Step 3

Grant The ACA Petition On Retransmission Consent.

The retransmission consent process is used by broadcasters to increase rates, while small video providers are not permitted to find alternate sources of content. Further, programmers engage in the costly process of “tying” less popular channels with “must have” programming, and specify into which tiers each channel must be placed. This raises end-user costs while limiting consumer choices. It also greatly increases the costs of providing MVPD services, which in turn impedes further broadband deployment and penetration. Consumers have also lost access to programming while negotiations drag on.

The American Cable Association’s petition requesting Commission action on retransmission consent has been pending for over two years. In order to encourage more broadband deployment and penetration, action on this petition should be a major Commission priority.

Conclusion

Policymakers are increasingly concerned about the pace and scope of broadband deployment and penetration. While there is no one single action that can accelerate this process by itself, the Commission can take three short-term steps that will encourage further deployment and penetration of broadband. As outlined above, the Commission should:

1. Grant the OPASTCO-NTCA petition on set-top boxes.
2. Extend the prohibition against exclusive contracts for programming as provided for in Section 628.
3. Grant the ACA petition on retransmission consent.

Given the established link between video services and broadband, taking these steps will demonstrate that the Commission is taking serious action to further the deployment and penetration of broadband services.